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## **OLR Bill Analysis**

### **SB 859**

#### ***AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES.***

##### **SUMMARY:**

This bill bans private transfer fees on and after the bill's effective date. A "private transfer fee" is, with some exceptions, a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property located in Connecticut or (2) for the right to make or accept the conveyance.

For any private transfer fee obligation in existence as of the bill's effective date, the bill requires the obligation to be (1) disclosed in the sale contract and (2) recorded in the town's land records by December 31, 2013. The bill also specifies how real property can become unencumbered by an existing obligation.

The bill makes a violation of its provisions an unfair or deceptive act or practice under the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND). It specifies that if an agent acts on behalf of a principal to illegally impose a private transfer fee, the principal is liable.

EFFECTIVE DATE: Upon passage

##### **PRIVATE TRANSFER FEES BANNED PROSPECTIVELY**

The bill makes it illegal for a person (which includes an entity) to impose a private transfer fee obligation on or after the bill's effective date. It specifies that any obligation imposed on or after that date and any agreement that violates the bill is void and unenforceable.

##### **EXISTING PRIVATE TRANSFER FEES REGULATED**

###### ***Disclosure Required***

The bill requires a contract offered or entered into after the bill's effective date for the sale of real property in Connecticut that was previously encumbered by a private transfer fee obligation to include a (1) provision that discloses the obligation's existence, (2) description of the obligation, and (3) statement that the obligation is subject to the bill's provisions.

The bill specifies that (1) a contract that fails to make such a disclosure is void and unenforceable and (2) the purchaser is not liable to the seller for damages under the contract. It also specifies that the purchaser is entitled to the return of all deposits he or she made in connection with the contract.

***Recording Required***

For private transfer fee obligations imposed before the bill's effective date, the bill requires the person who is paid the fee to record the obligation in the town's land records by December 31, 2013. The recording must be a separate document entitled, in at least 14-point bold type, "Notice of Private Transfer Fee Obligation" that includes:

1. the amount of the private transfer fee or method by which it is calculated;
2. if the involved property is residential, fee examples for a home priced at \$250,000, \$500,000, and \$750,000;
3. the date or circumstances under which the obligation expires;
4. what the collected fee will be used for;
5. the name of the person who collects the fee, specific contact information for where the fee is sent, and the person's acknowledged signature; and
6. the involved property's legal description.

The bill allows a person who is paid the fee to file an amendment to the notice when contact information changes. Any such amendment must include the above recording information.

## **REMOVING A FEE OBLIGATION**

The bill allows an existing private transfer fee obligation to be removed if:

1. the person who is paid the fee fails to record the "Notice of Private Transfer Fee Obligation" by December 31, 2013 or
2. upon the written request of a grantor of real property for a statement showing the amount of the fee payable upon the property's conveyance, the person who is paid the fee fails to provide a written statement within 30 days of the request.

If either of these situations occurs, the bill requires a grantor of real property to record an affidavit specifying the facts of the matter in the town's land records. By law, such an affidavit must include a description of the land affected by the affidavit and the land owner's name (CGS § 47-12a).

Upon filing the affidavit, the grantor is not subject to the obligation. The grantor can thereafter convey the property without paying the private transfer fee and the property will thereafter be conveyed free and clear of the obligation.

When an affidavit is recorded as set forth in the bill, it is admissible as prima facie evidence that the grantor submitted a written request for the fee statement and the person who is paid the fee failed to provide the statement within 30 days.

## **DEFINITIONS**

### ***Private Transfer Fee***

Under the bill, a "private transfer fee" is a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property in Connecticut or (2) for the right to make or accept the conveyance. It does not include any:

1. consideration payable by a grantee to a grantor for the conveyance of an interest in real property (including mineral rights), including any subsequent consideration payable by the

grantee for the property based on subsequent appreciation, development, or sale of the property, provided the subsequent consideration is payable on a one-time basis and the obligation to pay the consideration does not bind successors in title to the property;

2. commission payable to a real estate broker or salesperson for selling real property pursuant to a contract or agreement between the broker or salesperson and a grantee or grantor, including any subsequent commission payable by the grantee or grantor for the property based on subsequent appreciation, development, or sale of the property;
3. interest, fee, charge, or other amount payable by a borrower to a lender under a mortgage, including any fee payable to the lender for agreeing to assume the loan or conveyance of the property, an estoppel letter or certificate (e.g., a document that certifies a certain set of facts and bars a party from later claiming a different set of facts), and any shared appreciation interest, profit participation, or other consideration payable to the lender in connection with the loan;
4. rent, reimbursement, fee, charge, or other amount payable by a lessee to a lessor, including any fee or charge payable to the lessor for agreeing to assign, sublease, or encumber a rental agreement or lease;
5. consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property, for the holder to waive, release, or not exercise the option or right;
6. tax, assessment, fine, fee, charge, or other amount payable to or imposed by a governmental entity;
7. dues, assessment, fine, contribution, fee, charge, or other amount payable to an association or a unit owners' association organized under the Common Interest Ownership Act pursuant

to any declaration, covenant, law, or association bylaw, rule, or regulation, including a fee or charge payable to the association for an estoppel letter or certificate;

8. dues, assessment, fine, contribution, fee, charge, or other amount imposed by a declaration or covenant encumbering a municipality, county, or any combination of the two, or a neighborhood or other area, irrespective of boundaries or political subdivision and payable solely to a tax-exempt organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities that benefit the municipality, county, neighborhood, or other area; or
9. dues, assessment, contribution, fee, charge, or other amount payable for the purchase or transfer of a club membership related to real property.

### ***Private Transfer Fee Obligation***

The bill defines “private transfer fee obligation” as an obligation arising under a declaration or a covenant recorded against the title to real property located in Connecticut or under any contractual agreement or promise, whether or not recorded, that requires the payment of a private transfer fee upon a conveyance or a subsequent conveyance of an interest in the real property.

## **BACKGROUND**

### ***Connecticut Unfair Trade Practices Act (CUTPA)***

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to

\$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea     19     Nay   0     (02/19/2013)